



STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/23/01	Bill No:	SB 1019
Tax:	Property	Author:	Torlakson
Board Position:		Related Bills:	AB 226 (B. Campbell) AB 49X (B. Campbell) AB 62X (Cohn) SB 28X (Sher) SB 30X (Brulte)

## BILL SUMMARY

This bill would, in part, establish special revenue allocation procedures to be performed by county auditors, and audited by the State Controller, for certain power plant facilities that are assessed by the Board of Equalization.

## ANALYSIS

### Current Law

Section 1 of Article XIII A of the California Constitution gives the Legislature the authority to determine the allocation of property tax revenues derived from the basic, one percent property tax rate. The statutes setting forth the allocation methods for revenues differ depending upon whether they are derived from property assessed by the Board of Equalization (i.e., “state assessed” property) or by county assessors (i.e., “locally assessed” property). The statutes relating to allocation of revenue from locally assessed property commence with Revenue and Taxation Code Section 95, and the statutes for state assessed property commence with Section 100. These provisions are discussed in detail below.

The Board of Equalization’s role with respect to the property taxation of state assessed property is limited to determining the value of the property. Values are set each year at current fair market value as determined by the Members of the Board of Equalization. Property tax bills are calculated and collected at the local level, with the county auditor and tax collector each performing a separate function. The allocation of property tax revenues from both state and locally-assessed properties is performed by each of the 58 county auditors. The State Controller provides guidance and audits the allocations of made by county auditors.

Under existing assessment practices, some electrical generation facilities are state assessed and others are locally assessed. Section 19 of Article XIII of the California Constitution provides that “[t]he Board shall annually assess \* \* \* property, except franchises, owned or used by *regulated* railway, telegraph, or telephone companies, car companies operating on railways in the State, and *companies transmitting or selling gas or electricity.*” [Emphasis added.] The Board adopted a regulation, Property Tax Rule

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905, which provides that electrical generation facilities will be state assessed only if: “(1) the facility was constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility; or, (2) the company owning the facility is a state assessee for reasons other than its ownership of the generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.” In practical application, the rule generally limits state assessment of electrical generation facilities to those owned by rate regulated public utilities, such as Pacific Gas and Electric Company.

### **Proposed Law**

This bill would add Section 100.8 to the Revenue and Taxation Code to modify the allocation of property tax revenue derived from state assessed power plant facilities by excluding the Educational Revenue Augmentation Fund (ERAF) from any share of the revenue derived from these facilities.

### **Background**

#### **Electrical Restructuring: Existing Facilities and New Facilities**

As a result of the electric utility industry restructuring in California (AB 1890; Stats. 1996, Ch. 854), rate regulated public utilities sold many of their electrical generation facilities. Public utilities were required to sell certain generation facilities, and opted to sell other facilities voluntarily. In addition, the restructuring and subsequent opening of electrical generation to competition has resulted in the planned development and construction of many new electrical generation facilities across the state.

According to the California Energy Commission, “In the 1990s before the state's electricity generation industry was restructured, the California Energy Commission certified 12 power plants. Of these, three were never built. Nine plants are now in operation producing 952 megawatts of generation; one of them has a Phase 2 project that is nearing completion and will add an additional 44 megawatts by May 2001. Restructuring occurred in March 1998. Since April 1999, the Energy Commission has approved nine major power plant projects with a combined generation capacity of 6,278 megawatts. Six power plants, with a generation capacity of 4,308 megawatts are now under construction, with 2,368 megawatts expected to be on-line by the end of the year 2001. In addition, another 15 electricity generating projects, totaling 7,126 megawatts of generation and an estimated capital investment of more than \$4.8 billion, are currently being considered for licensing by the Commission. The California Energy Commission has the statutory authority to site and license thermal power plants that are rated at 50 megawatts and larger and related transmission lines, fuel supply lines and other facilities.” Please see <http://www.energy.ca.gov/sitingcases/index.html>

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### **Assessment of Facilities: State and Local**

Article XIII, Section 19 of the California Constitution, requires the Board of Equalization to annually assess the property of companies selling or transmitting electricity. The Board historically self-restricted its assessment jurisdiction to companies selling or transmitting electricity that were rate regulated and operating pursuant to a certificate of public convenience and necessity by the PUC or comparable license from a regulatory agency. Property owned by other types of companies selling or transmitting electricity – co-generation facilities, small power generation facilities, and generation facilities using renewable energy resources – traditionally have been assessed by county assessors.

With respect to the Board's assessment jurisdiction over the property of companies selling or transmitting electricity in view of electrical restructuring for the long-term, the Board adopted a regulation, Property Tax Rule 905, clearly confining its jurisdiction to those facilities that are owned by public utilities. Existing electrical generating facilities purchased from public utilities in the late 1990's are locally assessed, and newly constructed plants to be built by non-public utility companies, such as Calpine, AES, Duke Energy, and Southern Energy, will also be locally assessed.

### **Property Tax Revenue Allocation**

Prior to Proposition 13, each local government with taxing powers (counties, cities, schools, and special districts, etc.) could levy a property tax on the property located within their boundaries. Each jurisdiction determined its tax rate independently (within certain statutory restrictions). In total, the statewide average tax rate prior to Proposition 13 was 2.67 percent. After Proposition 13, the property tax rate was limited to a maximum of one percent of a property's assessed value.

Since local jurisdictions could no longer set their own individual tax rates and instead were required to share in a pro rata portion of the maximum one percent tax rate, the Legislature was given the authority to determine how the property tax revenue proceeds should be allocated. The legislation that fundamentally established the current property tax allocation system, found in Revenue & Taxation Code §95 - §99.2, was Assembly Bill 8 (Stats. 1979, Chap. 282; L. Greene). The descriptive term for the allocation procedure for locally assessed property tax revenues is still commonly referred to as "AB 8," some twenty years later.

In addition to establishing allocation procedures, AB 8 also provided financial relief to local agencies to offset most of the property tax revenue losses incurred after Proposition 13. AB 8 provided relief in two ways: first, it reduced certain county health and welfare program costs and, second, it shifted property taxes from schools to cities, counties and special districts, replacing the school's lost revenues with increased General Fund revenues. (There were six counties - Alpine, Lassen, Mariposa, Plumas, Stanislaus, and Trinity – referred to as "negative bailout" counties, where the amount of property taxes allocated to the county was *reduced* because the health and welfare components of AB 8 were so favorable to those counties.)

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In 1992, the Educational Revenue Augmentation Fund (ERAF), was established. ERAF partially reversed the relief provided to local agencies by AB 8. The effect of ERAF was to redirect a portion of property tax revenues previously allocated to cities, counties, and special districts to schools, thus reducing the state's General Fund obligations for funding schools under Proposition 98.

Additional information on property tax revenue allocation can be obtained from various publications authored by the Legislative Analyst's Office (LAO) and available online at <http://www.lao.ca.gov>.

### **Allocation Generally**

- "Reconsidering AB 8: Exploring Alternative Ways to Allocate Property Taxes", LAO Report, February 2000
- "Property Taxes—Why Some Local Governments Get More Than Others", LAO Policy Brief, August 1996
- "Why County Revenues Vary: State Laws and Local Conditions Affecting County Finance", LAO Report, May 1998

### **Allocation and ERAF**

- "Reversing the Property Tax Shifts", LAO Policy Brief, April 1996
- "Property Tax Shift", Perspectives and Issues (pp. 203 - 213), February 1997
- "Improving Incentives for Property Tax Administration", LAO Perspectives and Issues (pp. 215 - 226), February 1997
- "Major Milestones: 25 Years of the State-Local Fiscal Relationship", LAO California Update, December 1997
- "Shifting Gears: Rethinking Property Tax Shift Relief", LAO Report, February 1999

**Locally Assessed Property.** Generally, property tax revenues from locally assessed property are allocated by situs of the property and accrue only to the taxing jurisdictions in the tax rate area where the property is located. A tax rate area is a specific geographic area within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies.

**State Assessed Property.** Under current law, the allocation procedures for property tax revenues derived from state assessed property are different from those for locally assessed property. The revenue allocation system for state assessed property was established by legislation enacted in 1986 via AB 2890 (Stats. 1986, Chap. 1457). Prior to the 1988-89 fiscal year, the property tax revenues from state and locally assessed property were allocated in the same manner – by tax rate area. However, the process of identifying property according to tax rate area had become overwhelming for state assesses. As a result, AB 2890 was enacted to simplify the reporting and allocation process for state assesses. It allowed state assesses to report their unitary property holdings by county, rather than by individual tax rate area. It additionally allowed the

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Board to allocate value by county, rather than by tax rate area. This change allowed state assessees to receive only one tax bill per county. Previously, each state assessee received hundreds of property tax bills from each county in which they owned property because a separate tax bill was prepared for each tax rate area in which property was physically located. Statewide there are nearly 58,000 tax rate areas.

Essentially, AB 2890 established a revenue allocation procedure according to a prescribed formula, performed by the county auditor. The results of AB 2890 are as follows:

- Preserves each local agency's tax base (hereafter called the "unitary base") for any jurisdiction which had state assessed property sited within its boundaries in the 1987-88 fiscal year.
- Thereafter, annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
- If, after each local agency has been distributed its "unitary base" plus two percent, there is any property tax revenue remaining, then this surplus revenue, referred to as "incremental growth," is distributed to all agencies in the county. Agencies with unitary bases also receive a share of the incremental growth.
- "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., county-wide distribution) in proportion to the entity's share of property tax revenues derived from locally assessed property.
- It is often stated that all state assessee revenue is shared "county-wide," but this is not technically true. In essence, it is only incremental growth that is distributed "county-wide" without regard to where growth in value took place or where new construction occurred.
- By establishing unitary bases, jurisdictions were held harmless by the allocation system established by AB 2890 and some jurisdictions (those which had little or no state assessed property located in their jurisdictional boundaries prior to AB 2890) have since benefited from the county-wide system established for sharing the incremental growth.

#### **Special Situations: Local Agencies Created After 1988 and ERAF.**

Local agencies that did not exist prior to 1988, which would include ERAF, have a unitary base of zero.

- These local agencies may, however, still receive a share of state assessee revenues. However, their share would consist only of a portion of the county-wide incremental growth pool, if any, since they have no "unitary base."
- Once a local agency is granted a portion of the county-wide pool, it is thereafter annually guaranteed some amount of state assessee revenues.
- In some instances, local agencies and ERAF receive no property tax revenues from state assessed property. This occurs when:

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- The local agency was not in existence prior to 1988 and;
- Since the local agency's formation, there has not been a year when there were sufficient revenues to give those local agencies which received property tax revenues in the prior year their previous year's share plus two percent.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to exclude the Educational Revenue Augmentation Fund from any share of property tax revenue derived from the assessment of power plant facilities. ERAF's share would then be distributed to all other jurisdictions. By ensuring that local jurisdictions receive a greater portion of the property tax revenues from facilities than they would otherwise, the bill would provide an incentive to approve their construction and lessen community opposition.
2. **Should *locally* assessed power plants be included?** As currently drafted, these special revenue allocation provisions only apply if the power plant is state assessed in the first instance. But most plants currently under construction or scheduled for construction will be locally assessed. With respect to existing power plants, many electrical generation facilities previously owned by public utilities, except for hydroelectric and nuclear energy facilities, have been sold to private companies and are also currently locally assessed. Thus, in accordance with the intent of this bill, the revenue allocation procedures for locally assessed property, commencing with Section 95, should also be amended.
3. **ERAF and state assessees property tax revenue.** Although most facilities to be constructed in the near future will be locally assessed, it is possible that some might be built that would be state assessed. The significance of the change in revenue allocation procedures for state assessed facilities would be that, generally, property tax revenues derived from newly constructed state assessed property is incremental growth revenue with *all* local agencies located in the county, including ERAF. However, with respect to state assessed facilities, in some instances ERAF may not receive any revenue in counties where there has been insufficient *incremental growth* in state assessed property tax revenues to trigger an ERAF share in the revenues. In these counties, this bill, if applicable only to state assessed facilities, would have no impact.
4. **Is the revenue allocation of *existing* plants intended to be affected?** Proposed R&T Section 100.8 does not limit its revenue allocation provisions to new plants. Rather, it states that the proposed allocation procedure is to begin "commencing with the 2001-2002 fiscal year." This could be interpreted to require the reallocation of property tax revenues from existing plants as well as new plants. If this is not the intent, then appropriate amendments should be considered.

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5. **What is a “power plant facility”?** Proposed Section 100.8(d) defines “power plant facility” by reference to Public Resources Code Section 25123. However this code section does not define “facility” but rather the “modification” of a facility. PRC Section 25123 defines the phrase “modification of an existing facility to mean “any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25 percent in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line.” Public Resources Code Section 25120 defines the term “thermal powerplant” to mean “any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division. ‘Thermal powerplant’ does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.” Is this the code reference that is intended?
6. **Does this bill apply to wind, hydroelectric, or solar photovoltaic electrical generating facilities?** If the definition of a power plant is intended to be that found in Section 25120, then these types of plants should be addressed depending upon the author’s intent.
7. **Does this bill apply to repowered *existing* facilities?** Some plants are currently being “repowered” and upgraded to larger plants. Would these plants qualify?
8. **The Legislature has established the precedent of situs-based revenue allocations for certain post-AB 2890 newly constructed state assessed properties.** With respect to changing the allocation from any future or existing power plants that may be state assessed, the Legislature has approved three exceptions (§100(i)<sup>1</sup>, (j)<sup>2</sup>, and (k)<sup>3</sup>) to the revenue allocation system for state assessed property established by AB 2890. Those exceptions ensured that, for three specific projects that were to be constructed by public utilities, the revenues from the projects would essentially be allocated as if they were subject to assessment by the county assessor. Thus, the property tax revenue derived from these proposed projects (only two of the three projects were subsequently constructed) would go to the jurisdictions in the tax rate area where the project was to be sited rather than being shared with all jurisdictions located in the county as “incremental growth.”

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<sup>1</sup> A computer center in the City of Fairfield (Pacific Bell).

<sup>2</sup> An education and training center in the City of Livermore (PG&E).

<sup>3</sup> For a proposed power plant in the City of Chula Vista (SDG&E), which was subsequently never constructed.

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9. **Related Legislation.** AB 62X (Cohn) would provide a direct bonus to cities or counties that approve the construction of new facilities for the first five years after they are placed in service. The bonus would equal 25% of the total property tax revenue derived from the plant and would be in addition to the city or county's proportionate share of property tax.

Additionally, there are four other bills which propose adding a Section 100.8 to the Revenue and Taxation Code related to the allocation of revenues from power plants or electrical generation facilities.

- SB 28X (Sher) would allocate the revenue from locally assessed plants to the local agencies that comprise the tax rate area where the property is located.
- SB 30X (Brulte) would allocate the revenue only to those local agencies that comprise the tax rate area where the property is located (i.e. identical to the allocation procedures for locally assessed property) from state assessed "electrical generation facilities."
- AB 226 (B. Campbell) and AB 49X (B. Campbell), identical measures, would dedicate 50% of the revenue from state assessed "power plant facilities" to the county and/or city where the property is located as specified.

## **COST ESTIMATE**

This measure would not increase the Board of Equalization's costs since its role, with respect to the property taxation of state assessed property, is limited to determining the value of the property. The allocation of property tax revenue proceeds for both state and locally assessed property is performed by each of 58 county auditors. The State Controller provides guidance and audits the allocation of property taxes made by county auditors.

## **REVENUE ESTIMATE**

This proposal should not affect total property tax revenues but would increase future property tax revenues allocated to local jurisdictions in counties with power plant facilities. It would also affect the State's obligation for funding schools, because the Educational Revenue Augmentation Fund, which is dedicated to schools, would not receive its share of these revenues.

The California Constitution requires the State Board of Equalization to annually assess the property, other than franchises, of a company transmitting or selling gas or electricity. The Board allocates state assessed unitary values to a single countywide tax rate area in each county where the assessee has property. Statutory formulas are used to allocate taxes from the countywide tax rate area to the numerous local agencies in

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the county. Revenue for locally assessed property, on the other hand, is distributed to the local agencies whose boundaries contain the location of the particular property.

With the deregulation of the electrical industry in California, nearly all fossil-fuel electricity generating assets were divested by electric utilities by the end of 1999. Plans for the construction of several new power plants have been announced by non-utility power producing companies. According to the California Energy Commission, six power plants will be on line before the end of 2001 (which therefore may not be affected by this bill if limited to plants first placed in service after January 1, 2002) and 15 electricity generating projects, with an estimated capital investment of more than \$4.8 billion, are currently being considered for licensing by the Commission. Under this proposal, the property tax revenues from these new plants (and possibly for existing plants) would be reallocated. The effects of this reallocation among local agencies and the State is not within the purview of the Board of Equalization.

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